

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

FIRST APPEAL NO.1398 OF 2008

Shri Dilip s/o Kanhaiyalal Dewani,
 Aged about 41 years,
 Occ. Business,
 R/o. Block No.226-B, Jaripatka,
 Nagpur.

.. Appellant

.. Versus.

1. Oriental Insurance Company Limited,
 Punjab & Sindh Bank,
 Central Avenue Road,
 Nagpur.

2. Shri L.C. Gurbaxani (Deleted)

2 (a) Ashok Lalchand Gurbaxani,
 Aged Major, Occ. Business,
 R/o. Kadbi Chowk, Behind Petrol Pump,
 Nagpur.

2 (b) Girish Lalchand Gurbaxani,
 Aged Major, Occ. Business,
 R/o. Kadbi Chowk, Behind Petrol Pump.
 Nagpur.

.. Respondents

.....
 None for the appellant,
 Ms Shilpa Tapadia, Advocate for respondent no.1.

CORAM : M.S. SONAK, J.
DATED : DECEMBER 10, 2021.

JUDGMENT

None for the appellant. Heard Ms. Shilpa Tapadia, learned counsel for respondent no.1-Insurance Company.

2. This appeal takes an exception to the judgment and award dated 9.1.2007 made by the Motor Accident Claims Tribunal, Nagpur (Tribunal) in Claim Petition No.694/2002 to the extent it awards to the appellant-claimant compensation of only Rs.1,19,500/- as against the claim of Rs.12,00,000/-.

3. The record bears out that the appellant used to carry on the business of repairing mixers and cookers by moving around the town on his bicycle with the necessary tools and instruments for such repairs. On 12.10.2001 at about 7.00 pm, the appellant was knocked by a tractor-trolley bearing no.MH-31/M-7935 owned by respondent no.2, which came from behind him. As a result of this knock, the claimant sustained serious injuries i.e. fracture of the right clavicle and second to fourth rib, fracture of the right superior and inferior tubic ramous, right tubic bone fractured with external injury, and fracture pelvis with bladder rapture.

4. There is ample evidence on record of which cognizance was taken by the Tribunal that establishes the

appellant had to be admitted to the CIIMS Hospital on no less than three occasions. I have perused the record and the same is replete with several hospital bills, which the appellant had to settle/pay for admission in the hospital, ICU, and other procedures. There are several bills which concern the purchase of medicines for his treatment. Several bills concern the payment which the appellant had to make towards the pathology tests and other diagnostic procedures etc.

5. The Tribunal has determined that the amount under these bills comes to only Rs.56,443=58 and rounded up this amount to Rs.56,500/-. The Tribunal, in doing so, has failed to take into account the amount which the appellant paid to the hospitals and laboratories for the various pathology tests and other procedures. The appellant had quite correctly calculated the amount to Rs.1,25,503/- or thereabouts. Even if it is taken that there is some amount of duplication, the amount comes to Rs.1,00,000/- or thereabouts and not of Rs.56,500/-. Therefore, by way of reimbursement of medical expenses itself, an award of Rs.1,00,000/- will represent the just compensation.

6. The Tribunal has awarded compensation of only Rs.3,000/- towards the conveyance and special diet, simply

because the appellant was unable to produce any documentary evidence. Having regard to the injuries suffered by the appellant and the fact that he had been admitted to the hospital thrice, this amount needs to be increased to Rs.10,000/-. This is more so because their evidence on record indicates that at least for five months, the appellant was undergoing treatment for the injuries suffered by him.

7. The Tribunal has taken the monthly income of the appellant at only Rs.3,000/- though he had claimed that he was earning Rs.6,000/- per month. The appellant's claim, in the circumstances, was quite reasonable and there was no reason to curtail the same. Therefore, the compensation against this head is required to be enhanced to Rs.30,000/-. Towards the pain and suffering, the Tribunal has awarded only Rs.20,000/-. This is also quite insufficient. The evidence on record bears out that the appellant use to carry out his business by traveling on a bicycle and repairing mixers and cookers etc. The injuries sustained by him involved a fracture to his clavicle bone and pelvis and also to the urinary bladder. Towards the pain and suffering, therefore, the compensation of at least Rs.30,000/- should have been awarded. Therefore, this amount is enhanced from Rs.20,000/- to Rs.30,000/-.

8. The Tribunal, towards the loss of natural faculty of limb, loss of pleasure, and probable difficulties, has awarded Rs.25,000/-. The Tribunal has failed to appreciate that the appellant's income would have been affected on account of the injuries sustained by him and having regard to the nature of the business that was being carried out by him. Therefore, under this head, compensation of Rs.50,000/- was due. Hence, the total compensation, which in my judgment, will represent just compensation would then come to Rs.2,20,000/- instead of Rs.1,19,500/- awarded by the Tribunal.

9. Ms. Shilpa Tapadia, the learned counsel for the respondent - Insurance Company submitted that no documentary evidence was produced by the appellant to justify most of the heads of the compensation claimed. The record indicates that voluminous documentary evidence was produced concerning the hospital and medical bills etc. Having regard to the business that was undertaken by the appellant, there would be no documentary evidence as such readily available. Therefore, the appellant should not have been non-suited on this ground.

10. Ms. Tapadia also pointed out that compensation should not turn into a bonanza. She is quite right in submission and therefore, I agree that the appellant was not entitled to raise an exaggerated claim of Rs.12,00,000/-. At the same time, I believe that compensation of Rs.2,20,000/-, in the facts of this case, will not constitute a bonanza. Incidentally, it was pointed out by the learned counsel for the insurance company before this court that the claim was restricted to Rs.4,00,000/-, even this claim appears to be on higher side.

11. This appeal is therefore **partly allowed**. The compensation amount is enhanced to Rs.2,20,000/- in place of Rs.1,19,500/- awarded by the Tribunal. The directions for interest are maintained.

12. At this point of time, the direction for investment need not be complied with and the same are set aside. The investment and premature withdrawal directions are set aside. The appeal is disposed of in the aforesaid terms without any order for costs.

[M.S. Sonak, J.]

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